

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Luke Petrinovic	Team: Squad #13	CCRB Case #: 201605586	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/22/2016 12:10 AM	Location of Incident: South East corner of Prospect Avenue and Westchester Avenue	Precinct: 40	18 Mo. SOL 12/22/2017	EO SOL 12/22/2017	
Date/Time CV Reported Wed, 06/22/2016 3:25 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/28/2016 10:53 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Ernesto Bautista	28399	953671	040 PCT
2. POM Juan Santiago	09507	951206	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Baudilio Garciarivas	10251	947916	040 PCT
2. SGT John Ferrara	01746	925280	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Juan Santiago	Force: PO Juan Santiago struck § 87(2)(b) with a vehicle.	
B.POM Ernesto Bautista	Force: PO Ernesto Bautista used physical force against § 87(2)(b)	
C.POM Juan Santiago	Force: PO Juan Santiago used physical force against § 87(2)(b)	
D.POM Juan Santiago	Discourtesy: PO Juan Santiago spoke discourteously to § 87(2)(b)	

Case Summary

On June 22, 2016, SGT John Ferrara, of the 40th Precinct, reported this complaint over the phone with the Internal Affairs Bureau on behalf of § 87(2)(b) an injured prisoner. It was referred to the CCRB, and received on June 28, 2016, under log number 16-22655.

One June 22, 2016, at approximately 12:10 a.m., § 87(2)(b) was riding a bicycle on Union Avenue at Westchester Avenue, in the Bronx. Behind him was a police car containing PO Juan Santiago, PO Ernesto Bautista, PO Baudillo Garcia-Rivas, and SGT Ferrara, all of the 40th Precinct. § 87(2)(b) made a right turn onto Westchester Avenue, going through a red light in the process, and the officers turned on their lights and followed § 87(2)(b) to stop him. § 87(2)(b) did not immediately stop, and kept riding down Westchester Avenue to Prospect Avenue.

At Prospect Avenue, PO Santiago allegedly drove the car into § 87(2)(b)'s bicycle, striking him and knocking him to the ground (**Allegation A**). The officers then exited the car, and arrested § 87(2)(b). During the arrest, PO Bautista and PO Santiago allegedly struck § 87(2)(b) in the lower back and PO Santiago allegedly called him a “fucker” (**Allegations B, C and D**). He could not see what he had been struck with. § 87(2)(b) was charged with § 87(2)(b).

Mediation, Civil and Criminal Histories

- Due to § 87(2)(b)'s arrest, this case was not eligible for mediation.
- As of September 28, 2016, there has been no Notice of Claim filed with the New York City Comptroller's office in regards to this incident (Board Review 01).
- § 87(2)(b) § 87(2)(c)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Bautista has been the subject of eight prior CCRB allegations across two cases during his three year tenure with the NYPD. Four of these allegations concerned the use of force, and two of them were substantiated. In case 201506161, PO Bautista was found to have used a chokehold on an individual and restricted his breathing. The victim in the case was a prisoner PO Bautista was processing, who had engaged in an argument with him. The CCRB recommended charges against PO Bautista, and the NYPD has yet to take disciplinary action in the car (Board Review 04).
- PO Santiago has been the subject of eleven prior CCRB allegations across three cases during his five year tenure with the NYPD. Three of these allegations concerned use of force, and one concerned discourteous language, all of which were closed as unsubstantiated. PO Santiago has been the subject of one substantiated allegation of

misconduct: In case 201506188, PO Santiago was found to have committed a retaliatory arrest. The CCRB recommended a command discipline, and the NYPD closed the case as a duplicate without taking any disciplinary action (Board Review 05).

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegations not pleaded

- **Force:** An allegation that officers pointed their guns and § 87(2)(b) is not being pled. Although the IAB log and the officer statements describe this occurring, § 87(2)(b) did not allege it in his statements to the CCRB.
- **Abuse of Authority:** The stop of § 87(2)(b) is not being pled as the only factual dispute is whether he ran a red light on his bicycle, which the officers consistently described and with which he was eventually charged.

Allegation A – Force: PO Juan Santiago struck § 87(2)(b) with a vehicle.

§ 87(2)(g) [REDACTED] § 87(2)(b) [REDACTED] stated that the officers drove behind him and instructed him to pull over through an open window. § 87(2)(b) [REDACTED] asked why he was being stopped and received no response. Soon after that, PO Santiago drove the car into § 87(2)(b) [REDACTED] striking him and knocking him to the ground (Board Review 06).

§ 87(2)(b) [REDACTED] was inconsistent in his statement about where exactly the collision occurred, at one point stating that it occurred in the intersection of Prospect Avenue and Westchester Avenue, and then later stating that it happened further down the block. When pressed to explain this discrepancy, he was unable to do so. He did not respond to repeated attempts to contact him with follow-up questions.

§ 87(2)(b) [REDACTED] was treated at § 87(2)(b) [REDACTED] several hours after the incident, and diagnosed with pain in the elbow and knee, where abrasions were noted. He reported to hospital staff that he had been “hit” by the police, and he described being assaulted. There was no mention of § 87(2)(b) [REDACTED] being struck by a car in his medical records (Board Review 07).

PO Santiago (Board Review 08), PO Bautista (Board Review 09), PO Garcia-Rivas (Board Review 10), and SGT Ferrara (Board Review 11) all consistently denied that § 87(2)(b) [REDACTED] was struck with the car. They described following § 87(2)(b) [REDACTED] by a short distance for approximately one block attempting to pull him over before he stopped, dismounted, and then threw his bike to the ground and fled on foot.

SGT Ferrara stated in his interview that § 87(2)(b) [REDACTED] made a non-descript allegation that force had been used against him during the incident, after he was in handcuffs. CAPT Thomas Alps, of the 40th Precinct, responded and prepared a TRI report for the incident shortly thereafter, in which he spoke with PO Bautista, PO Garcia-Rivas, SGT Ferrara, and § 87(2)(b) [REDACTED] § 87(2)(g) [REDACTED]
[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Force: PO Ernesto Bautista used physical force against § 87(2)(b)

Allegation C – Force: PO Juan Santiago used physical force against § 87(2)(b)

Allegation D -Discourtesy: PO Juan Santiago spoke discourteously to § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) stated that the officers approached and got on top of him after being thrown to the ground by the car. PO Santiago struck him once in the back, and then he was placed in handcuffs. Either PO Bautista or PO Santiago struck him one more time after he had been placed in handcuffs. § 87(2)(b) could not see tell how he was being struck. During the arrest, PO Santiago yelled at him, and called him a “fucker.”

All the officers consistently stated that § 87(2)(b) ran from them on foot after they attempted to stop him, and that he was apprehended approximately one block away. PO Santiago stated that § 87(2)(b) dove to the ground after being ordered to stop, and he then placed § 87(2)(b) in handcuffs without struggle. PO Bautista corroborated that § 87(2)(b) threw himself to the ground after they chased him, and stated that he then placed him in handcuffs with PO Santiago. He also stated that § 87(2)(b) resisted a little at first by not taking his arms out from under him. Both officers denied ever striking § 87(2)(b) and both denied that PO Santiago ever called him a “fucker.”

SGT Ferrara corroborated the officers’ statements that § 87(2)(b) threw himself to the ground and that they did not strike him. He also denied that any officer called § 87(2)(b) “fucker.” He described § 87(2)(b)’s resistance as greater than what PO Bautista and PO Santiago described, saying that § 87(2)(b) kicked his legs repeatedly and refused to place his arms behind his back while being handcuffed. PO Garcia-Rivas was not present when § 87(2)(b) was placed in handcuffs.

§ 87(2)(g)

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